



POLICE DEPARTMENT

October 25, 2019

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Alexandro Berrios :
Tax Registry No. 929719 :
79th Precinct :

Case No. 2018-18789

Police Officer Jason Frederick :
Tax Registry No. 930183 :
79th Precinct :

Case No. 2018-18790

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Jamie Moran, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, NY 10038

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2018-18789

1. Said Police Officer Alexandro Berrios, while assigned to the 79th Precinct and on-duty, on or about May 13, 2017, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer travelled outside the confines of his assigned sector and command without permission or authority.
P.G. 203-10, Page 1, Paragraph 5 Public Contact - Prohibited Conduct
2. Said Police Officer Alexandro Berrios, while assigned to the 79th Precinct and on-duty, on or about May 13, 2017, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer failed to immediately respond and render police services to a job properly assigned to him.
P.G. 203-10, Page 1, Paragraph 5 Public Contact - Prohibited Conduct
P.G. 202-21, Page 1, Paragraph 8 Police Officer

Disciplinary Case No. 2018-18790

1. Said Police Officer Jason Frederick, while assigned to the 79th Precinct and on-duty, on or about May 13, 2017, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer travelled outside the confines of his assigned sector and command without permission or authority.
P.G. 203-10, Page 1, Paragraph 5 Public Contact - Prohibited Conduct
2. Said Police Officer Jason Frederick, while assigned to the 79th Precinct and on-duty, on or about May 13, 2017, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer failed to immediately respond and render police services to a job properly assigned to him.
P.G. 203-10, Page 1, Paragraph 5 Public Contact - Prohibited Conduct
P.G. 202-21, Page 1, Paragraph 8 Police Officer

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on September 30, 2019. Respondents, through their counsel, entered pleas of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

ANALYSIS

The credible evidence established that Respondents were assigned to First Platoon at the 79th Precinct and had performed those duties for approximately 15 years, for the last five of which they were partners. On May 13, 2017, Respondents were performing patrol duties during their normal midnight tour in Sector DAVID of the 79th Precinct. At approximately 0300 hours, two other Police Officers, [REDACTED] and [REDACTED], who were performing patrol duties in Sector ADAM, were assigned a call for an emotionally disturbed person (EDP) with a severed finger. Their response to the call required them to depart their sector, as well as the precinct, in order to travel to Kings County Hospital (T. 9-10, 13-14, 29-30).

At approximately 0542 hours, Respondents heard a 911 call over their radio which reported a broken car window, suggesting possible criminal mischief, in Sector ADAM (T. 13, 31). While Police Officers [REDACTED] and [REDACTED] responded that they would take the assignment, the job was reassigned to Respondents, after [REDACTED] and [REDACTED] failed to respond immediately to the location of the call (T. 14, 31). By their own admissions, instead of responding directly to the call for police services in Sector ADAM, Respondents drove from Sector DAVID to Kings County Hospital,¹ with the intention of confronting [REDACTED] and [REDACTED] about their perceived lack of diligence in responding to the criminal mischief call (*Id.*, 32). Respondents conceded that they neither sought nor received authorization to depart from their assigned patrol area (T. 15-16, 33).

Respondents each testified that the drive from Sector DAVID to the hospital was approximately eight to ten minutes long (T. 15, 33). Upon their arrival at the hospital Emergency Department, they did not see [REDACTED] and [REDACTED] sector car parked where they

¹ A review of NYPD Precinct maps reveals that Respondents, even taking the most expeditious route from Sector DAVID, travelled through the 77th Precinct and into the 71st Precinct, where Kings County Hospital is located, a distance of roughly 3.4 miles.

expected it to be, so they drove around the hospital to a parking lot where they observed the sector car (T. 16, 34-35). Respondents approached [REDACTED] and [REDACTED]'s car and observed them apparently using their mobile phones, but they did not initiate any conversation (T. 16-17, 35). Respondents then returned to the precinct and responded to the criminal mischief call in Sector ADAM, which they marked closed at 0717 hours (T. 17, 60).

Upon Respondents' return to the 79th Precinct at the conclusion of their tour, they were admonished by the Patrol Supervisor, Sergeant Chance, for their unauthorized departure from their patrol area (T. 17-18, 36-37).

Based upon the admissions made by Respondents, and the credible relevant evidence in the record, I find Respondent Berrios Guilty of Specifications 1 and 2 in Disciplinary Case No. 2018-18789. I further find Respondent Frederick Guilty of Specifications 1 and 2 in Disciplinary Case No. 2018-18790.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined (*see Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 240 [1974]). Both Respondents were appointed to the Department on July 1, 2002. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

The Department Advocate has recommended a penalty of ten vacation days, citing *Disciplinary Case Nos. 2015-14162* (April 4, 2016), *2016-16353* (September 29, 2017), and *2017-17582* (January 7, 2019) as precedent. In each of those negotiated settlements, respondents pled guilty to abandoning their police duties without authority and conducting personal business unrelated to the Department (leaving command to pick up another MOS from a car dealership;

leaving post to launch one's boat in an attempt to retrieve a lost drone; leaving command to check on one's daughter). In this case, Respondents testified credibly that their intentions were to confront fellow MOS about the performance of their police duties. A diligent search of the Department databases reveals no cases on point with the instant matter. Based upon the foregoing, I find the facts of this case sufficiently distinguishable from the precedent cited by the Department Advocate to warrant a unique penalty recommendation.

Both Respondents testified that they delayed responding to the criminal mischief call and drove out of their patrol area to confront Police Officers [REDACTED] and [REDACTED] because they believed that [REDACTED] and [REDACTED] were dilatory in their own response to the earlier EDP call. Each Respondent conceded that they were not in supervisory positions and circumvented the chain of command in order to address the problem as they perceived it. Respondent Berrios testified that his motivation was to obtain proof that [REDACTED] and [REDACTED] were dawdling on the aforementioned call, thereby supporting his belief that they did so habitually. Respondent Frederick testified that he intended to confront [REDACTED] and [REDACTED] because he felt that the chain of command had not addressed his concerns about their performance, which he had previously brought to their attention. While I credit Respondent Frederick's testimony regarding his motivation, I find Respondent Berrios' assertion that he went to Kings County Hospital to obtain evidence to be embellished.

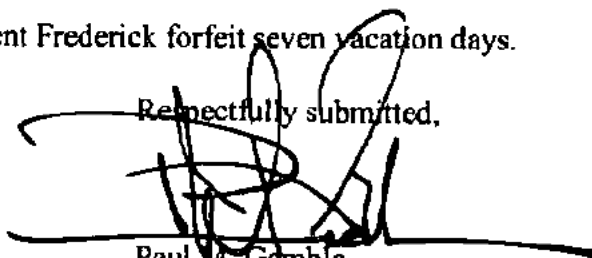
Even accepting, for the sake of argument, Respondents' reasoning for the confrontation, in order to do so they had to leave both Sectors ADAM and DAVID unattended, effectively reducing the police resources for that period by 50%. This diminution of police resources, without prior authorization, was unjustifiable, even if [REDACTED] and [REDACTED] were truly dilatory as Respondents suspected.

While the failure to respond expeditiously to a call for assistance, as well as making an unauthorized departure from their assigned patrol area, may not be excused by a misguided attempt to enforce a professional standard, such rationale is not comparable with an abandonment of police duties for more personal reasons, a factor which the cases cited by the Department Advocate have in common.

Respondent Berrios has a prior formal disciplinary history; Respondent Frederick does not.

Based upon the foregoing, I recommend that Respondent Berrios forfeit ten vacation days. I further recommend that Respondent Frederick forfeit seven vacation days.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED



FEB 04 2020
DERMOT SHEA
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ALEXANDRO BERRIOS
TAX REGISTRY NO. 929719
DISCIPLINARY CASE NO. 2018-18789

Respondent was appointed to the Department on July 1, 2002. On his last three annual performance evaluations, he received a 3.5 overall rating of "Highly Competent/Competent" for 2016 and 4.0 overall ratings of "Highly Competent" for 2014 and 2015. He has received eight medals for Excellent Police Duty and one medal for Meritorious Police Duty.

In 2011, Respondent forfeited 25 vacation days after pleading guilty to (i) failing to voucher a diamond ring, (ii) failing to notify IAB after becoming aware of the lost property and (iii) making false statements to the lost ring's owner.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JASON FREDERICK
TAX REGISTRY NO. 930183
DISCIPLINARY CASE NO. 2018-18790

Respondent was appointed to the Department on July 1, 2002. On his last three annual performance evaluations, he received a 3.5 overall rating of "Highly Competent/Competent" in 2016, a 3.0 overall rating of "Competent" in 2015, and a 4.0 overall rating of "Highly Competent" in 2014.

Respondent has no formal disciplinary history.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials